Office Supreme Court, U.S.
FILED
DEC 14 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 124

ATLAS SCRAPER AND ENGINEERING CO.,

vs.

HARRY A. PURSCHE.

PETITION FOR REHEARING.

R. WELTON WHANN,
ROBERT M. MCMANIGAL,
315 West Ninth Street,
Los Angeles 15, California,
Attorneys for Petitioner.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962
No. 124

ATLAS SCRAPER AND ENGINEERING CO.,

vs.

HARRY A. PURSCHE.

PETITION FOR REHEARING.

Petitioner respectfully prays that this Honorable Court rehear and reconsider the merits of the petition for a writ of certiorari in the above cause because of the importance of the questions presented and the great need of direction by this Court.

The dire necessity for an authoritative ruling of this Court on the construction of 28 U. S. C. Section 1338(b) is clearly evidenced by the fact that the Appellate Court reversed the Trial Court on the jurisdictional question in 8 of the 17 decisions (other than the decisions of this Court) cited by the petitioner and respondent in connection with this petition. In other words, the Appellate Court reversed the Trial Court in almost 50% of these cases in which the jurisdictional question under Section 1338(b) was involved. See Appendix A.

A clarification by this Court would avoid such reversals and, in fact, would eliminate in the first instance the improper joining of non-federal questions

The urgent need for a guiding decision of this Court is also manifested by the facts that the Second and Sixth Circuits formerly followed the liberal construction of 28 U. S. C. Section 1338(b), and that Judges in a single Circuit have disagreed as to the construction of the phrase "related claim" appearing in this Statute.

There obviously is considerable uncertainty in the minds of the Courts, litigants and the Bar. The fact that able Judges of different Circuits and even of the same Circuit so widely disagree establishes that attempts to apply the uncertain, divergent and troublesome law as it now stands as to the construction of the phrase "related claim," does not enable the Courts, even with the most conscientious effort, to reach consistent decisions.

From the decisions of the lower Federal Courts, even though 29 years have passed since this Court's decision in *Hurn v. Oursler*, and 14 years have passed since the enactment of 28 U. S. C. Section 1338(b), it is clearly evident that different rules of law will be applied from time-to-time in the different Circuits, if not in the same Circuit, until this Court decides the questions presented by this petition, and until that time:

1. An unwarranted amount of judicial time and energy and mounting costs to the Government will continue to be spent in ever increasing amounts in pleadings, motions, trials, arguments and appeals, as well as costs and uncertainty to litigants.

2. The law will continue to be indefinite and uncertain — with its many resultant disadvantages. For example, litigants relying on the liberal construction of

the term "related claim" will be out of Court in the event that this Court decides that under 28 U. S. C. Section 1338(b) a "related claim" of unfair competition is restricted to a claim in which the primary relief sought is with respect to an essentially single wrong, however characterized, as distinguished from separate "causes of action". It is to the benefit of such litigants to have an early construction by this Court of that Section in order to enable them, if necessary, to institute proceedings in the State Courts before their actions are barred.

3. Citizens of different Circuits will have advantages over citizens of other Circuits with respect to the joinder of non-federal causes with federal causes. Where the liberal construction with respect to 28 U. S. C. Section 1338(b) prevails Federal and State causes may be joined in the Federal suit; whereas, in jurisdictions where the restrictive construction prevails, such non-federal causes cannot be litigated in the Federal Courts. This results in litigants who reside in Circuits where the restrictive construction prevails to institute their litigation in those Circuits where the liberal construction is applied.

In *Romero v. International Terminating Operating Co.*, 358 U. S. 354, 3 L. Ed. 2d 368, Justice Frankfurter stated that a conflict in the construction of such an old and important statute as the Judiciary Act of 1875 (now 28 U. S. C. Sec. 1331) called for "a full exposition of the problem".

We respectfully submit that the doctrine of *Hurn v. Oursler* and the correct and proper construction of 28 U. S. C. Section 1338(b) is equally important, and should be defined by this Court.

Conclusion.

A decision by this Court of the questions presented by this petition will not only define the law with respect to 28 U. S. C. Section 1338(b) and thereby be of great benefit to the Courts, litigants, and the Bar having matters involving that Statute, but will also be helpful to the Court, litigants and the Bar in connection with all problems of *pendente* jurisdiction.

Because of the importance of the questions presented, reconsideration of the petition and the granting of the writ is respectfully urged.

Respectfully submitted,

R. WELTON WHANN,
ROBERT M. MCMANIGAL,
Attorneys for Petitioner.

Certificate of Counsel.

It is hereby certified that the above petition for rehearing is presented in good faith and not for delay and that it is restricted to the grounds specified in Rule 58(2) of this Court.

ROBERT M. MCMANIGAL.

APPENDIX "A."

Cases	Jurisdictional Question Affirmed, Reversed, or Not in Issue
American Fidelity & Cas. Co. v. Owensboro Mining Co., 222 F. 2d 109.	Reversed
Bullock v. Sears Roebuck, 239 F. 2d 170.	Reversed
Dann v. Studebaker-Packard Corporation, 288 F. 2d 201.	No issue as to §1338(b)
Dubil v. Rayford Camp & Co., 184 F. 2d 899.	Reversed
French Renovating Co. v. Ray Renovating Co., 170 F. 2d 945.	Affirmed
Hook v. Hook & Ackerman, 233 F. 2d 180.	Affirmed
Judson Dunaway Corporation v. Hygienic Products Co., 178 F. 2d 461.	No issue as to §1338(b).
Kleinman v. Betty Dain Creations, 189 F. 2d 546.	Affirmed.
Landstrom v. Thorpe, 189 F. 2d 46.	Reversed
Lyon v. Quality Courts United, 249 F. 2d 790.	Affirmed
Maternally Yours, Inc. v. Your Maternity Shop, Inc., 234 F. 2d 538.	Affirmed
Muskegon Piston Ring Company v. Olsen, et al., 307 F. 2d 85, 134 U. S. P. Q. 471.	Affirmed
O'Brien v. Westinghouse Electric Corporation, 293 F. 2d 1.	Reversed
Powder Power Tool Corp. v. Powder Actuated Tool Co., 230 F. 2d 409.	Reversed
Ramirez & Ferraud Chili Co. v. Las Palmas Food Company, 146 Fed. Supp. 594, aff'd 245 F. 2d 874.	Affirmed
Ross-Whitney Corp. v. Smith Kline & French Lab., 207 F. 2d 190.	No issue as to §1338(b)
Royal Lace Paper Works v. Pest-Guard Products, 240 F. 2d 814.	Reversed
Schreyer v. Casco Products Co., 190 F. 2d 921.	Affirmed
Telechron, Inc., et al. v. Parissi, 197 F. 2d 757.	Reversed
United Mine Workers of America v. Meadow Creek Coal Company, 263 F. 2d 52.	Affirmed